

Notice of Allowability

Application No.

09/728,378

Examiner

ALEX NOGUEROLA

Applicant(s)

UPDYKE ET AL.

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/30/2003.
2. ☒ The allowed claim(s) is/are 67,68,71-75 and 77-87.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT for THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>12042003</u> . |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No. <u>10302003</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Rae Lynn Prengaman on December 04, 2003.

The application has been amended as follows:

- a) some of the claims have been renumbered. Applicant's amendment of October 30, 2003 has two claims numbered "Claim 77." So, the second claim 77 has been renumbered as -- Claim 78 -- and all subsequent claims have been incremented by one (37 CFR 1.126). Thus, Claim 78 of the amendment is now Claim 79, Claim 79 of the amendment is now Claim 80, and so forth. Claim dependencies have also been appropriately renumbered. So, claims that depend from Claim 78 in the amendment now depend from Claim 79 and claims that depend from Claim 84 in the amendment now depend from Claim 85;
- b) Claim 67, line 2: -- between 8 and 25 (wt/vol) % -- has been inserted before "acrylamide";
- c) Claim 76 has been deleted;

- d) Claim 77, line 1: "76" has been replaced with -- 67 --;
 - e) Claim 77, line 1: -- (wt/vol) -- has been inserted between "10" and "percent";
 - e) Claim 78, line 1: "76" has been replaced with -- 67 --; and
 - f) Claim 78, line 1: -- (wt/vol) -- has been inserted between "12" and "percent";
 - g) Claim 85, line 2: -- (wt/vol) -- has been inserted between "25" and "percent";
 - h) Claim 86, line 2: -- (wt/vol) -- has been inserted between "10" and "percent"; and
 - i) Claim 87, line 2: -- (wt/vol) -- has been inserted between "12" and "percent".
2. Support for the insertion in the claims of -- (wt/vol) -- before percent is convention in the art. Applicant's specification in several places refers to percent acrylamide in terms of %T, the total percentage of acrylamide monomer, which has units of "grams per 100 ml (i.e. weight per volume per cent)".¹

Allowable Subject Matter

3. Claims 67, 68, 71-75, and 77-87 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: the gel disclosed by the Ratliff reference, ACA 54, is 5 % acrylamide.² Applicant has amended independent claim 67 to require between 8-10 % acrylamide. Independent claim 79 has not been similarly amended because although ACA 54 is capable of being used in electrophoresis, in the Ratliff reference the ACA 54 gel and bis-Tris are used in a filtration column, not for electrophoresis³. EP 0753142 B1 was published on August 11, 1999, after Applicant's priority dates of March 31, 1994 and October 11, 1996.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX NOGUEROLA whose telephone number is (703) 305-5686. The examiner can normally be reached on M-F 8:30 - 5:00.

¹ Page 5 of Andrews, Electrophoresis: Theory, Techniques, and Biochemical and Clinical applications, 2nd ed., Clarendon Press-Oxford 1986.

² Sigma-Aldrich on-line catalog entry for Ultrogel Aca 54.

³ At the bottom of the first column on page 1890, Ratliff refers to Abou-Zeid et al., "Characterization of fibronectin-binding antigens released by Mycobacterium tuberculosis and Mycobacterium bovis BCG. Infect. Immun. 56:3046-3051, for details on the electrophoresis conditions. Abou-Zeid et al. in turn, in the first full paragraph in the first column on page 3047, refers to Laemmli, "Cleavage of structural proteins during the assembly of the head of bacteriophage T4. Nature (London) 227:680-685. The upshot of these linked references for electrophoresis conditions is that the Ratliff reference does not disclose "a gel buffer having a pH between 6 and 8, wherein said gel buffer comprises bis(2-hydroxyethyl) imminotris(hydroxymethyl) methane.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NAM NGUYEN can be reached on (703) 308-3322. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Alex Noguera
Alex Noguera

12/08/03
Primary Examiner
TC1753